

E-filed on 4/2/2008

LEWIS AND ROCA LLP

3993 Howard Hughes Parkway, Suite 600
 Las Vegas, NV 89169-5996
 Facsimile (702) 949-8321
 Telephone (702) 949-8320
 Susan M. Freeman AZ State Bar No. 004199
 Email: sfreeman@lrlaw.com
 Rob Charles NV State Bar No. 006593
 Email: rcharles@lrlaw.com
 John Hinderaker AZ State Bar No. 018024
 Email: jhinderaker@lrlaw.com

FOLEY & LARNER LLP

321 North Clark Street, Suite 2800
 Chicago, IL 60610
 Facsimile (312) 832-4700
 Telephone (312) 832-4500
 Edward J. Green IL State Bar No. 6225069
 Email:
 Geoffrey S. Goodman IL State Bar No. 6272297

Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company,
 USA Capital Realty Advisors, LLC,
 USA Capital Diversified Trust Deed Fund, LLC,
 USA Capital First Trust Deed Fund, LLC,¹
 USA Securities, LLC,²
 Debtors.

Case No. BK-S-06-10725-LBR
 Case No. BK-S-06-10726-LBR
 Case No. BK-S-06-10727-LBR
 Case No. BK-S-06-10728-LBR¹
 Case No. BK-S-06-10729-LBR²

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**Stipulation Resolving Proofs Of Claim
 Filed By The Pension Benefit Guaranty
 Corporation**

Date of Hearing: April 17, 2008

Time of Hearing: 9:30 a.m.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

This Stipulation is made as of March 28, 2008, by and between the USACM Liquidating Trust (the "Liquidating Trust") and the Pension Benefit Guaranty Corporation (the "PBGC").

RECITALS

1. On April 13, 2006, USA Commercial Mortgage Company ("USACM") and four related entities identified in the caption above (collectively, "Debtors") filed

¹ This bankruptcy case was closed on October 12, 2007.

² This bankruptcy case was closed on December 26, 2007.

1 voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Debtors' chapter
2 11 cases were jointly administered by an order of this Court.

3 2. On January 8, 2007, this Court entered an order (the "Confirmation Order")
4 confirming Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (the
5 "Plan"). The Plan became effective on March 12, 2007 (the "Effective Date").

6 3. On the Effective Date, the Liquidating Trust was created pursuant to the
7 terms of the Plan and the Confirmation Order. Under the Plan, the Liquidating Trust is
8 the successor to USACM with respect to standing to seek allowance and disallowance of
9 claims.

10 4. On November 9, 2006, the PBGC filed three claims against USACM's
11 estate (collectively, the "Original Claims"). Claim No. 10725-00791 ("791") was an
12 unliquidated claim for pension insurance premiums allegedly owed by USACM to the
13 PBGC. Claim No. 10725-00793 ("793") was an estimated claim in the amount of
14 \$1,068,233 for minimum funding contributions allegedly owed by USACM to its pension
15 plan (the "Pension Plan"). Claim No. 10725-00794 ("794") was an estimated claim in
16 the amount of \$884,389 for unfunded benefit liabilities allegedly owed to the PBGC in
17 connection with the Pension Plan.

18 5. On January 26, 2007, USACM and PBGC entered into the Agreement for
19 Appointment of Trustee and Termination of Plan ("Trusteeship Agreement"). Under the
20 Trusteeship Agreement, the Pension Plan was terminated, PBGC was appointed statutory
21 trustee, and the plan termination date was established as January 15, 2007.

22 6. On March 2, 2007, USACM filed an objection to the Original Claims [DE
23 2978].

24 7. Prior to distributing estate property to the USACM Trust under the Plan,
25 USACM held a reserve for the PBGC's alleged administrative and priority Claims.

26 8. On April 23, 2007, the PBGC filed amended Claim No. 791 in an estimated
27 amount of \$120,870, consisting of an administrative claim in the amount of \$112,500
28 pursuant to 29 U.S.C. § 1306(a)(7) (the "Termination Premium Claim"), an

1 administrative claim for flat-rate and variable-rate premiums in the amount of \$72, and an
2 unsecured claim in the amount of \$8,298.

3 9. On April 23, 2007, the PBGC also filed amended Claim No. 793, an
4 administrative claim in an estimated amount of \$1,211,242.

5 10. On April 25, 2007, the PBGC filed amended Claim No. 794, an unsecured,
6 non-priority claim in an estimated amount of \$1,700,624. Amended Claim No. 794 also
7 reserved the right to seek administrative or priority tax treatment for the claim.

8 11. On September 11, 2007, the Liquidating Trust filed an objection (the
9 “Objection”) to amended Claim Nos. 791, 793, and 794 (collectively, the “Amended
10 Claims”) [DE 4728]. On November 1, 2007, the PBGC filed a response to the Objection.
11 On November 21, 2007, the Liquidating Trust filed a reply in support of the Objection.

12 12. Through arms-length negotiations between the Liquidating Trust and the
13 PBGC, the Liquidating Trust and the PBGC have come to a mutually agreeable
14 resolution of the Amended Claims, other than the Termination Premium Claim, pursuant
15 to the terms and conditions set forth below.

16 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND
17 AGREED, by and among the undersigned as follows:

18 1. PBGC’s Amended Claim No. 794 is hereby allowed as an unsecured, non-
19 priority claim against USACM’s estate in the amount of \$1,000,000.00 (the “Allowed
20 Unsecured Claim”). Other than the Allowed Unsecured Claim or as set forth in
21 paragraph 3, the PBGC releases, waives and forever discharges any and all other
22 unsecured claims that it may possess against USACM’s estate.

23 2. PBGC’s Amended Claim No. 793 is hereby allowed as an administrative
24 claim, pursuant to § 503(b) of the Bankruptcy Code, in the amount of \$100,000.00 (the
25 “Allowed Administrative Claim”). Other than the Allowed Administrative Claim or as
26 set forth in paragraph 3, the PBGC releases, waives and forever discharges any and all
27 other administrative or priority claims that it may possess against (a) USACM’s estate,
28 (b) the estate of any of the other four jointly administered Debtors, and (c) any other

1 estates of businesses related to USA Commercial Mortgage Company, including, but not
 2 limited to, USA Investors VI, LLC, HMA Sales, LLC, USA Investment Partners, LLC,
 3 and Tree Moss Partners, LLC collectively, the ("USA Capital Estates").

4 3. The parties are not resolving the Termination Premium Claim pursuant to
 5 this Stipulation. The PBGC's rights with respect to the Termination Premium Claim,
 6 including its rights to argue that the Termination Premium Claim is entitled to
 7 administrative or priority treatment, and the Liquidating Trust's rights to oppose the
 8 amount or priority of the Termination Premium Claim are expressly preserved. The
 9 Court is currently scheduled to hear argument on the Termination Premium Claim on
 10 April 17, 2008. Pursuant to the request of the Court and by agreement of the parties, all
 11 briefs on the issues on the Termination Premium Claim shall be submitted on or before
 12 March 31, 2008.

13 4. USACM shall maintain a reserve of \$150,000 for the Termination Premium
 14 Claim pending this Court's decision on the allowance or disallowance of such claim. All
 15 other reserves for the Amended Claims will be released by USACM to the Liquidating
 16 Trust. Any of the USA Capital Estates may also release any reserves created for claims
 17 asserted by the PBGC against such estates.

18 5. The stipulation or order approving the stipulation shall have no impact on
 19 any claims that the PBGC has asserted or may possess against Thomas Hantges or Joseph
 20 Milanowski in their respective individual capacities, whether in their personal bankruptcy
 21 cases or otherwise.

22 6. The Court may approve the parties' stipulation without notice or a hearing.

23 DATED: March 28, 2008.

24 **LEWIS AND ROCA LLP**

25 By: /s/ RC (#6593)

26 Susan M. Freeman, AZ 4199 (*pro hac vice*)

27 Rob Charles, NV 6593

28 -and-

FOLEY & LARDNER LLP

Edward J. Green
Geoffrey S. Goodman

Counsel for USACM Liquidating Trust

**PENSION BENEFIT GUARANTY
CORPORATION**

By: /s/ Erika E. Barnes (#197309)

James Eggeman Assistant Chief Counsel
Frank A. Anderson, DC 478234 (*pro hac
vice*)

Erika E. Barnes, CA 197309 (*pro hac vice*)
Office of the Chief Counsel
1200 K Street, NW Suite 340
Washington, DC 20005-4026
Tel: 202-326-4020, ext. 3759
Email: anderson.frank@pbgc.gov